



To: Prospective Project Companies (PPCs)

Subject: Request for Qualifications (RFQ) No. 6M8003
Design-Build Finance Operate (DBFO)
Oakland International Airport Connector Project

The following are responses to written questions received from PPCs on the subject RFQ. The responses set forth below are for information only and do not constitute a change or modification to the existing proposal documents. Any change to proposal documents will be accomplished by written Addendum/Addenda.

Question 1:

"We understand that BART is not requiring Core Subcontractors to be exclusive to a team led by a PPC at the RFQ or RFP stages. We understand that all Core Subcontractors need identified and, if not previously pre-qualified, approved by BART by the RFP submission.

This combination of requirements is problematic and very unusual for this type of transactions. The DBFO Entity will need to work as an integrated team to submit a firm, committed proposal to BART. This means sharing detailed bid information which teams are very unwilling to do unless all members of the team are exclusive to that team. From BART's point of view non-exclusivity and the possibility that parties participate in more than one team opens up risks of breaches of confidentiality and collusion and is unlikely to lead to the most competitive or successful outcome.

Although BART is not explicitly restricting the ability to form exclusive teams, the lack of restriction on participating in more than one DBFO Entity at the RFP stage makes it difficult to attract some participants into teams exclusively. This threatens the ability to submit comprehensive and competitive proposals.

It is our strong recommendation that BART clarifies in the RFQ that Core Subcontractors must be exclusive to one DBFO Entity. This exclusivity could fall away following selection of a single Preferred Proponent allowing unsuccessful parties to join the successful Proponent, with BART's approval, at a later stage."

Answer 1:

Your comment is noted, however the RFQ remains unchanged.

Question 2 - Reference: RFQ page 5, Section 2.3.5:

"Last sentence in this section references the possible availability of CTC funds. Our understanding of the CA Infrastructure Financing Act is that those monies can only be used for a project that does not have State funding allocated and available to it? Please clarify."

Answer 2:

We are aware of the requirements of the IFA and intend to comply.

Question 3 – Reference: RFQ page 19, Section 7.3:

"The project procurement schedule appears to be very long. These transactions are expensive to complete. The extended procurement schedule will only add to the cost of this pursuit. The procurement schedule should be substantially shortened. We recommend the following schedule:

- One to two months following shortlisting of proponents for private meetings with BART to discuss the draft RFP.
- A proposal/bid period of no more than six months.
- Commercial/financial close no longer than two months after selection of a preferred proponent.
- Issuance of Notice to Proceed with financial close."

Answer 3:

We are working to shorten the schedule and expect that it will be adjusted for the RFP.

Question 4 – Reference: RFQ page 20, Section 8.0:

"This section indicates that only unsuccessful PPC's may request a debriefing. These efforts are expensive to complete. A debriefing for successful or unsuccessful PPC's can provide valuable lessons learned for future projects or as successful PPC's advance to the next stage of the procurement. All PPC's regardless of status should be given the right to a debriefing following the shortlisting process."

Answer 4:

The successful PPC will also have an ample opportunity to meet with the District to discuss the strengths and weaknesses of its proposal.

Question 5 – Reference: RFQ page 22, Section 8.2 (Step 4):

"There is a reference to Borderline Qualification Statements and a suggestion that additional (?) Teams may be "added to the Short List." This establishes an uncertain standard for quality in all submittals to BART associated with this project. The process associated with allowance of "borderline" submittals to precede to the next stage needs to be clarified. This contradicts BART's reference to only prequalifying three teams. BART should prequalify a maximum of three proponents and consider "borderline" qualification statements nonresponsive. The development of firm fixed proposals for this project will be

expensive. Proponents that strive to provide a complete submittal should be assured that "borderline" efforts will not be accepted by BART."

Answer 4:

The RFQ, page 22, Step 4 has been amended. Delete Step 4 and substitute with the following:

"Step 4: Selection of Prequalified PPCs and Notification

The District intends to prequalify a Short List of the three most highly rated DBFO Entities after a careful analysis of the ratings assigned to the criteria. An additional DBFO Entity may be included in the Short List if, in the District's sole discretion after careful consideration, each of the criteria ratings of its Qualification Statement is identical to each of the criteria ratings of the third ranked DBFO Entity.

Firms that submit a Qualification Statement will be notified in writing regarding the DBFO Entities selected for prequalification."

Question 6 – Reference: RFQ Page 23, Section 9.3:

"No more than one Core Subcontractor may be submitted in the Qualification for each of the Core Disciplines, Construction, Design, AGT Supply and Operations and Maintenance. Does this mean that a firm may only fill one role as a Core Subcontractor? This appears to defeat the benefit of an integrated design/build joint venture responsible for both design and construction of the fixed facilities. Many technology or AGT Suppliers are also very interested in the O & M Core Discipline. This statement appears to preclude the AGT Supplier from also serving as the O & M Core Subcontractor."

Answer 6:

As stated on RFQ page 1, Section 1.0, first sentence in 5th paragraph and on page 23, Section 9.1, second paragraph:

"All or part of any scope of work described herein may be performed by the PPC, a Core Subcontractor or by subconsultants or subcontractors."

Question 7 – Reference RFQ page 24, Section 9.4:

"There seems to be a requirement that the professional services subcontractor prequalify its DBE subs at the time it is prequalified. That is unusual and impractical at this early stage. Further, there is an ability to designate up to three separate sub tier providers for each of the specified professional disciplines. While that works well for later selecting the sub designers and would be nice for construction too if we need to list subcontractors, but becomes difficult if we need to lock in DBE content."

Answer 7:

The RFQ does not require that professional services subcontractors be prequalified, but rather that PPCs are encouraged to prequalify

Professional Services Subcontractors at this time, as stated on Page 24, RFQ Section 9.4:

"The PPC may have to draw on a wide range of Professional Services Subcontractors to undertake the Work and it may not be practical to identify all the members of the design team at this time. Prequalified PPCs must utilize the process identified in RFQ Section 11 CHANGES to request changes to the prequalified Professional Services Subcontractors identified in the Qualification Statement if necessary at a later date."

Also refer to RFQ page 1, Section 1, last sentence:

"Prequalification of DBE Professional Services Subcontractors at this time will facilitate the PPC's ability to meet the DBE Participation goals for Professional Services Identified in RFQ Section 13.0."

Question 8 – Reference RFQ page 25, Section 10.1.1 C.:

"This section states that a letter will be required from a surety stating that at least one member of the team can provide a performance and payment bond in an amount of not less than 100% of the total Fixed Facility and AGT cost. This requirement is potential difficult to resolve. Lenders on concession deals will generally seek a more liquid security, i.e., Letter of Credit, to satisfy their security needs. Given the PPP procurement that BART has adopted, performance security should be left to the lenders to determine at financial close."

Answer 8:

Your comment is noted. The RFQ will remain unchanged at this time; however, revised bonding requirements may be reflected in the RFP.

Question 9 – Reference RFQ page 24, Section 9.3.2:

"This section indicates that the Fixed Facilities Design scope of work... shall be led by a civil engineering entity or consulting firm registered to practice and licensed to provide professional engineering services within California. This appears to preclude an integrated design-build joint venture from serving as the Core Construction subcontractor and the Fixed Facilities Design Core Subcontractor. This would defeat one of the benefits of an integrated team delivery. Clarify the use of the word "led" in the RFQ to allow integrated design-build joint ventures."

Answer 9:

The RFQ has been amended to substitute the word "led" with the word "performed" in RFQ Section 9.3.2, as follows (changes underlined):

9.3.2 Fixed Facilities Design

The Fixed Facilities Design scope of work includes the design of all Fixed Facilities, and shall be performed by a civil engineering entity or consulting firm registered to practice and licensed to provide professional engineering services within the State of California.

**Also, refer to RFQ page 23, Section 9.1, 2nd paragraph which states:
"All or part of any scope of work described herein may be performed by the PPC, by subconsultants or subcontractors."**

Question 10:

"The RFQ describes a process whereby the PPC can submit a response to the RFQ without identifying one or more, or any Core Subcontractors, and further describes a process for adding Subcontractors after submission of the response to the RFQ in order to respond to the RFP. Further, in Section 15.4, the RFQ states that multiple Qualification Statements may be submitted; however each Qualification Statement must only focus on one AGT OST. Please clarify the following points:

- 1) That pre-qualified PPC's invited to respond to the RFP must have a complete team assembled with all required Subcontractors as part of their Proposal in response to the RFP.
- 2) That Pre-Qualified PPC's will only be able to submit one Proposal based on one OST in response to the RFP."

Answer 10:

A Qualification Statement may either name a single AGT supplier focusing on one Operating System Technology (OST); or if a specific AGT Supplier is not named, discuss a range of OSTs that the PPC is considering that can meet the requirements identified in Section 10.1.5.B.

In answer to 1) above; refer to RFQ page 33, Section 11.1 Time Limit For Requesting Changes:

"This Section describes requests by a prequalified PPC for changes. Requests shall be made in writing to the District no later than thirty calendar days prior to the date Proposals are submitted in response to the RFP."

The RFQ has been amended to delete the third sentence on RFQ page 1, Section 1.0, 6th paragraph, and substitute the following language as follows (changes underlined):

"If Core Subcontractors are not named by the PPC, the Prequalified PPC must utilize the process in RFQ Section 11 to request changes to the DBFO Entity no later than thirty calendar days prior to the date Proposals are submitted in response to the RFP."

In answer to 2) above; the RFP requirements are not yet finalized.

Question 11:

"Considering the significant effort and expense required for proposers to reply to the request for proposals, it is quite common in the industry for project owners to offer a financial incentive to short-listed teams. This offer generally increases the number of teams willing to respond, resulting in increased competition. We recommend that BART consider offering an honorarium or stipend payment of \$1.0 million each for the non-selected firms. An honorarium or stipend represents fair payment for the intellectual property developed during the bid stage and gives the PPC's comfort with regard to BART's commitment to the project."

Answer 11:

Your comment is noted. BART will take this under consideration.

Question 12:

"Has BART determined an affordability constraint for the project or has a public sector comparator been generated that would influence a PPC's approach to design and/or construction? Has the BART Board taken any action to approve a maximum availability payment that would give PPC's confidence that the procurement process will reach an acceptable conclusion?"

Answer 12:

Refer to the BART staff presentation to the BART Board of Directors, on September 22, 2005 entitled; "Oakland Airport Connector Public Private Partnership Board Presentation."

Question 13:

"Section 2.3.5 Funding Commitments indicates committed public funding sources. Is the amount provided in this section the maximum public funding contribution anticipated?"

Answer 13:

Refer to RFQ page 8, Section 3.3 A, 1st paragraph which states:

"The District is expecting to receive funding from various funding partners as set out in RFQ Section 2.3.5. Of this funding BART would pay approximately \$136 million to the Contractor in several installments. The District would commit to a fixed schedule of payments in the DBFO Contract."

Question 14:

"The Procurement process steps provided in Section 7.3 includes a Clarification and Evaluation of Proposals activity after proposals are submitted. Please confirm that BART does not intend to include a 'Best and Final Offer' (BAFO) process as part of the procurement process. BAFO's generally create an adversarial relationship between the customer and the concessionaire and do not traditionally lead to either a reduction in project cost or improved contract terms."

Answer 14:

The District does not currently intend to issue a BAFO but reserves the right to do so. Clarifications referred to in the table on RFQ page 19, Section 7.3, are defined under RFQ Section 8.1.A as follows:

"Clarification: A written request for information initiated by the District to the prequalified PPC stating the information needed and a date and time by which the information must be provided in writing to the District."

Question 15:

"APPENDIX F – OAC Requirement Forms requires the disclosure of "financial statements." Since there will be privately held companies responding to the RFP who treat this information as proprietary and confidential, we suggest the deletion of this requirement, and replace it with a requirement to provide BART assurances, such as "financial information on the firm for the past 2-3 years sufficient to demonstrate the firms' financial capability to perform the work."

Answer 15:

Your comment is noted. The RFQ remains unchanged.

Question 16:

"Section 10.1 OAC Requirements requires the proponent to submit a statement of current bonding capacity in an amount not less than 100% of project value. Does BART intend that the successful PPC be required to deliver a performance bond in the full amount of construction upon Contract execution? We suggest that BART consider excluding the 100% payment and performance bonding requirement to reflect the special nature of the PPP commercial structure between BART and the concessionaire, and the cost of bonding, and establish a structure for performance security consistent with the markets for this type of work. Other forms of security for the PPC's performance should be considered, such as a parent company guarantee, which would reduce the project cost and resultant availability payment."

Answer 16:

Your comment is noted. The RFQ remains unchanged, however revised bonding requirements may be reflected in the RFP.

Question 17:

"Within Appendix F – Item 2.2 – Reference is made to OAC requirement for the PPC (or Joint Venture or team member). For sub items 2.2.2 (project experience) and 2.2.3 (bonding), wording is for PPC or Joint Venture Partner. In the related sections for these requirements, Section 10.0 and Appendix E, wording is for PPC, Joint Venture Partner or team member. Should 2.2.2 and 2.2.3 be revised to add "or team member" to the requirement?"

Answer 17:

The RFQ has been amended to substitute RFQ Appendix F, Sections 2.2.2 and 2.2.3, as follows (changes underlined):

"2.2.2 Identify the project, location, owner, date of completion, contractor performing the work, and the PPC's, joint venture participant's, or team member's role and performance for at least two projects of US\$50,000,000 or more in value completed within the last ten (10) years involving complex engineering or heavy construction in a multi-disciplinary project in which the PPC, at least one joint venture participant, or at least one team member was either the sponsor or manager.

OR

Identify the project, location, owner, date of completion, contractor performing the work, and the PPC's, joint venture participant's or team member's role and performance for at least one project of US\$100,000,000 or more in value completed within the last five (5) years involving complex engineering or heavy construction in a multi-disciplinary project in which the PPC, at least one joint venture participant, or at least one team member was either the sponsor or manager.

2.2.3 Submit a notarized statement from an admitted surety insurer approved by the California Department of Insurance authorized to issue bonds in the State of California which states the amount of the PPC's, joint venture participant's, or team member's current bonding capacity for payment and performance bonds in an amount not less than 100 per cent of the total initial Fixed Facility and AGT cost."

Question 18:

"Which portions of the Qualification Statement are considered to be "the Financial Condition and Capacity" portions as referenced in Section 17.1?"

Answer 18:

The information in the Qualification Statements submitted in response to RFQ Section 10.1.2.B and Appendix F Sections 2.1.5, 3.1.5, 3.2.2, 4.1.5, 5.1.3.

Question 19:

"We would like to seek clarification on the Credit Rating of the entity that is making the availability payment and/or the credit rating of the entity (if any) that will guarantee the availability payment in the case that it is guaranteed by another entity. In some PPP projects, the availability payment obligation is guaranteed by a government entity to minimise the financing costs in the procurement of the project. "

Answer 19:

The District's credit rating is public information and is available from Standard & Poor's Rating Services and Moody's Investors Service, Inc.

Question 20:

"In the RFQ, the term "joint venture" is defined as two or more firms jointly entering into a contract for a specific venture. If the lead sponsor of a PPC owns 100% of the equity in the PPC but signs a "teaming agreement" with it's (sic) partners to bid for the project together, does this fall within the definition of "Joint Venture" for the purposes of the RFQ?

Answer 20:

Under California law a joint venture is a general partnership created to carry out a specific project. The "teaming agreement" has no specific legal meaning, and seems merely to be a contractual agreement (perhaps what is normally called the joint venture agreement) between separate legal entities. If two or more separate legal entities are carrying on a business for profit in California, and that business is a specific project for which they are contractually joining together, then the entity (which is separate from any of the constituent legal entities forming it) is a joint venture under California law.

Question 21:

"In the RFQ, s9.3 allows for the identification of one Core Subcontractor for each given core discipline. Given that the AGT supply is defined broadly, there may be more than one supplier of the AGT Operating System Technology, will the PPC be able to list more than one AGT supplier for the purposes of the RFQ?"

Answer 21:

Refer to RFQ page 23, Section 9.3, 2nd paragraph, which states:

"The PPC may identify up to four Core Subcontractors to perform the core discipline work. However, not more than one Core Subcontractor may be submitted in the Qualification Statement for a given core discipline."

The Core Subcontractor may use as many subcontractors or subsuppliers as needed to perform the entire scope of work in a given core discipline.

Question 22:

"We note that s15.15 of the RFQ states that: "Prequalified PPCs will be required to submit an express agreement of unlimited and joint and several liability of each venture participants or team members with their Proposals."

Is it BART's intention that the team member be responsible for guaranteeing the performance and obligations of each other jointly and severally? We do not think that PPCs to the Project will find this requirement commercially viable and

consequently, would have to consider their positions with respect to further participation in the process."

Answer 22:

The RFQ has been amended to delete the 2nd paragraph under Section 15.15 on page 43.

Question 23:

"Is BART going to provide its own quality assurance during construction (special inspection/materials testing)? If so, how will they advertise for that service?"

Answer 23:

This does not include the quality assurance to be required by the PPC. Additionally, the District expects to solicit competitive proposals for these services at a future date.

Question 24:

"What is required of the construction contractor to provide quality control during construction? What are the specifications?"

Answer 24:

This will be detailed in the RFP.

Question 25:

"We would like to confirm whether or not we can participate in several concessionaire groups as AGT supplier?"

Answer 25:

Core Subcontractors may participate with more than one PPC.

Question 26:

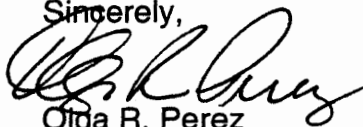
"Section 15.8 outlines page limitations for RFQ sections 10.1.1 through 10.1.16. We ask that the page limitation with respect to RFQ Section 10.1.5 – AGT Supplier – be increased from five (5) pages to (10) pages. The current page limitation is inadequate to effectively convey a procurement strategy for AGT supplier, given that there are six (6) relatively complex and integrated Major Subsystems to cover in the RFQ."

Answer 26:

The RFQ has been amended to increase the page limitations as requested.

If there are any questions regarding the above, please contact the undersigned at telephone number (510) 874-7435 or fax number (510) 287-4810.

Sincerely,


Olga R. Perez
Procurement